

## REMARKS

Favorable reconsideration and allowance of the claims of the present application are respectfully requested.

Before addressing the specific grounds of rejection raised in the present Office Action, applicants acknowledge, with thanks, the Examiner's indication that Claims 60-66 would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. In light of this indication, applicants have added new independent Claims 73, 74 and 77 which are based on allowable Claims 60, 61 and 64, respectively. New Claims 72, 75, 76, 78 and 79 are based on Claims 62, 63, 65 and 66, respectively.

Applicants submit that the newly added claims are allowable over the art of record since the newly added claims include a graded composition of C, which feature is deemed allowable by the Examiner in the present Office Action.

In addition to adding new Claims 73-79, applicants have amended Claim 56 to include the limitation of Claim 57. Thus, Claim 57 was cancelled. Also, Claim 69 was amended to include the limitation of Claim 70. Thus, Claim 70 was cancelled. Minor amendments to Claims 58 and 71 were made in light of the amendments to Claims 56 and 69, respectively.

In the present Office Action, Claims 56-59 and 67-72 stand rejected under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over Claims 1-7 of U.S. Patent No. 6,737,727 B2 to Gates, et al.

In response to the obviousness-type double patenting, applicants have enclosed a Terminal Disclaimer, which obviates the obviousness-type double patenting rejection.

The attached Terminal Disclaimer is signed by Robert M. Trepp, who is an attorney of record in this case, as evident by the originally executed Declaration.

Claims 56 and 67-69 stand rejected under 35 U.S.C. § 103 as allegedly unpatentable over the disclosure of U.S. Patent Application Publication No. 2003/0017635 A1 to Apen, et al. ("Apen, et al.").

Applicants respectfully submit that the claims of the present application are not rendered obvious by the disclosure of Apen, et al. Specifically, Apen, et al. do not teach or suggest a SiCOH dielectric material which includes atoms of Si, C, O and H wherein H is in the range from 10 to 55 at %, C is in the range from 5 to 45 at %, Si is in the range from 5 to 50 at % and O is in the range from 0 to 45 at %. Apen, et al. provide a low dielectric constant polyorganosilicon dielectric of formula 1. The atomic range of each of the atoms present in the prior art polyorganosilicon dielectric is not provided in Apen, et al. Indeed, the Examiner did not include either Claims 57 or 70 in his rejection citing Apen, et al. Since both independent Claims 56 and 69 now include the limitations of Claims 57 and 70, respectively, the claims of the present application are patentably distinct from the Apen, et al. disclosure.

The rejection under 35 U.S.C. §103 has been obviated; therefore reconsideration and withdrawal thereof is respectfully requested.

Thus, in view of the foregoing amendments and remarks, it is firmly believed that the present case is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,



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